

**Notice of Allowability**

Application No.

10/068,215

Examiner

ILIA OUSPENSKI

Applicant(s)

WOOD ET AL.

Art Unit

1644

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/2/2006.
2. ☒ The allowed claim(s) is/are 1,4,9,10 and 29, renumbered 1 - 5.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                   |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>2/15/2006</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance                          |
|   | 9. <input type="checkbox"/> Other _____.  |

## DETAILED ACTION

1. Applicant's amendments/remarks, filed 02/02/2006, are acknowledged, and have been entered.

Claim 30 has been cancelled.

Claims 2 – 3, 5 – 8, and 11 – 28 have been cancelled previously.

Claims 1, 4, 9 – 10, and 29 have been amended.

*Claims 1, 4, 9 – 10, and 29 are pending.*

2. Claims 1, 4, 9 – 10, and 29 are subject to a provisional rejection under the judicially created doctrine of **obviousness-type double patenting** as being unpatentable over claims 21 – 23 of copending Application USSN 11/340,429. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to methods of modulating immune response by administering anti-B7-4 antibody. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Given that the provisional obviousness-type double patenting rejection over copending USSN 11/340,429 is the only rejection remaining in the instant application, this **rejection is withdrawn** to permit the instant application to issue first. See MPEP 804.

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3. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the Issue Fee.

4. Authorization for this Examiner's Amendment was given in a telephone interview with Charlene A. Stern-Dombal, on behalf of DeAnn F. Smith, on 02/15/2006.

***Examiner's Amendment***

In the Specification:

5. The TITLE has been replaced with:  
-- METHODS OF UPMODULATING AN IMMUNE RESPONSE BY  
ADMINISTERING AN ANTI-B7-4 ANTIBODY --

In the Claims:

6. In claim 1, the word "recognizes" has been replaced with -- binds -- .

***Reasons for Allowance***

7. The following is an Examiner's Statement of Reasons for Allowance:

The Examiner's Amendment set forth supra, in conjunction with Applicant's amendment and arguments filed 02/02/2006, have obviated the previous rejection of record, mailed 09/29/2005.

***Claims 1, 4, 9 – 10, and 29 are pending and allowed.***

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The prior art does not teach or suggest the claimed methods for upmodulating an immune response by administering antibodies to B7-4.

8. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ILIA OUSPENSKI whose telephone number is 571-272-2920. The examiner can normally be reached on Monday-Friday 9 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ILIA OUSPENSKI  
Patent Examiner  
Art Unit 1644

February 17, 2006

PHILLIP GAMBEL  
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PRIMARY EXAMINER  
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2/17/06